

### **REMARKS**

This is in response to the Notice of Non-Compliant Amendment dated February 15, 2005 and the Office Action dated September 30, 2004. The numbering of the claims in Response to the Restriction Requirement mailed on April 12, 2004 was incorrect. Specifically, the original claims with a number higher than 26 were misnumbered in that response. Applicant has therefore renumbered those claims as set forth above so as to conform to the originally filed claims and further amended the claims so that the dependencies are correct. As a result, claims 15- 35 are now pending in this application.

#### **§103 Rejection of the Claims**

Claims 15, 17, 18, 20, 21, 25,26-28, 30, 31 and 35 were rejected under 35 USC § 103(a) as being unpatentable over Lu et al. (U.S. Patent No. 5,458,623) in view of Sun et al. (U.S. Patent No. 5,755,739). Claim 16 was rejected under 35 USC § 103(a) as being unpatentable over Lu et al. (U.S. Patent No. 5,458,623) in view of Sun et al. (U.S. Patent No. 5,755,739) and further in view of Callaghan et al. (U.S. Patent No. 4,895,152). The rejections are traversed and reconsideration is respectfully requested.

Claims 15 and 26, as amended herein, recite a system and method, respectively, for determining if multiple pacing pulses delivered via multiple pacing channels have captured the heart by comparing a test depolarization waveform produced by the multiple pacing pulses with a template depolarization waveform representing capture of the heart by each of the multiple pacing pulses delivered collectively. Failure of one or more of the multiple delivered pacing pulses to achieve capture produces a morphological difference between the test and template waveforms. Applicant finds no teaching or suggestion in the Lu reference, however, for comparing a test waveform recorded during delivery of multiple pacing pulses with a template waveform representing capture by the multiple pacing pulses delivered collectively in order to determine if one or more pacing pulses have failed to achieve capture. Consequently, the recitations of independent claims 15 and 26 and the claims depending therefrom are not rendered obvious by the teachings of Lu when combined with the Sun and/or Callaghan references. Withdrawal of the rejections is respectfully requested.

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT**

Serial Number: 10/003,718

Filing Date: October 26, 2001

Title: METHOD AND APPARATUS FOR CAPTURE VERIFICATION AND THRESHOLD DETERMINATION

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Dkt: 279.405US1

*Allowable Subject Matter*

Claims 19, 22-24, 29, 32 and 33 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In view of the foregoing remarks, applicants respectfully request withdrawal of the objections.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

DAVID TERNES ET AL.

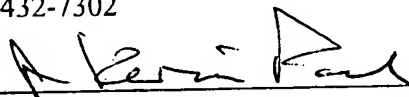
By their Representatives,

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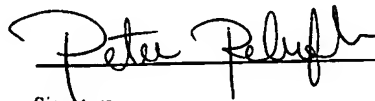
J. Kevin Parker

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15 day of April, 2005.

Peter Rebuffoni

Name



Signature